

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

YVETTE MUNOZ et al.,

Plaintiffs and Appellants,

v.

CITY OF UNION CITY et al.,

Defendants and Respondents.

A110121

(Alameda County

Super. Ct. No. H204672-7)

**ORDER MODIFYING OPINION AND
DENYING REHEARING
[NO CHANGE IN JUDGMENT]**

THE COURT:

It is ordered that the published opinion filed herein on February 28, 2007, be modified as follows:

1. On page 5, at the end of the first paragraph, add as a new footnote 1 the following footnote, which will require renumbering of all subsequent footnotes:

¹ In a petition for rehearing, Union City complains that our opinion failed to address their contention, raised in a footnote of its brief on the appeal, that the law of the case doctrine precludes us from modifying the amount of vicarious liability assessed against it. “ ‘ “The rule of ‘law of the case’ generally precludes multiple appellate review of the same issue in a single case. . . .” ’ [Citation.] [¶] . . . [¶] We will apply the law of the case doctrine where the point of law involved was necessary to the prior decision and was ‘ “actually presented and determined by the court.” ’ (*People v. Shuey* [(1975)] 13 Cal.3d [835,] 842.)” (*People v. Gray* (2005) 37 Cal.4th 168, 196-197.)

Union City’s argument is based on our statement, in *Munoz I*, that “this opinion affirms respondents’ judgment as to their vicarious liability claim.” (120 Cal.App.4th at p. 1115, fn. 14.) This statement was made in the context of rejecting the plaintiffs’ request that they be allowed to amend their complaint to allege their direct negligence claim as one for vicarious liability based on the negligence of identified employees other than Woodward. *Munoz I* did not address the reallocation issue presented by the current appeal; it affirmed the

City's vicarious liability for Woodward's negligence but did not necessarily freeze the measure of that liability at 50 percent.

There is no change in the judgment.

Respondents' petition for rehearing is denied.

Dated: _____

Kline, P.J.

Trial Court:

Alameda County Superior Court

Trial Judge:

Hon. Yolanda Northridge

Attorneys for Appellants
Yvette Munoz et al:

Law Office of Daniel U. Smith
Daniel U. Smith
Gwilliam, Ivary, Chiosso & Brewer
Steven R. Cavalli

Attorney for Respondents
City of Union City et al:

Farmer, Murphy, Smith & Alliston
George E. Murphy
Suzanne M. Nicholson
Ferguson, Praet & Sherman
Bruce D. Praet